

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Kelvin Demeatrius Brown,)	C.A. No. 8:04-22925-TLW-BHH
)	
Plaintiff,)	
)	
-versus-)	ORDER
)	
Deputy Director Willie Bamburg, Chief Horace)	
James, and Corporal Jermaine Downing, in their)	
individual capacities as OCRDC employess,)	
)	
Defendants.)	
)	

The Plaintiff has brought this *pro se* action against the Defendants under Title 42, United States Code, Section 1983. This matter is now before the undersigned for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Bruce H. Hendricks, to whom this case had previously been assigned pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) (D.S.C.). In her Report, Magistrate Judge Hendricks recommends that the defendants’ motion for summary judgment be granted. (Doc. # 20). The plaintiff has filed objections to the Report. (Doc. # 21).

In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections. . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not

objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F.Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of this standard, the Court has reviewed, de novo, the Report and the objections thereto. The Court accepts the Report, in part. As to plaintiff's claims that he was denied medical treatment and subjected to cruel and unusual punishment, this Court finds that the Report accurately summarizes and applies the applicable law to the facts of this case. Accordingly, the Court accepts the Report as written with regards to these claims.

However, as to plaintiff's claim that his due process rights were violated, this Court finds that there is insufficient analysis to resolve this question. Specifically, the Court cannot determine if plaintiff received a hearing in this matter, if he appeared at that hearing, or whether applicable law requires that he be given an opportunity to attend any hearing held. Plaintiff indicates no hearing was ever held. Defendants assert that a hearing was held, but have not indicated how that hearing was conducted. Additionally, the Court has insufficient information to determine if the plaintiff was advised of his right to appeal any such decision and the effect of any failure to appeal on this claim. Accordingly, as the Court finds that additional factual development is necessary regarding this claim, summary judgment on this claim is not appropriate at this time. Because the Report did not address this issue at great length, the Court denies this portion of the summary judgment motion at this time. However, defendants are hereby given thirty (30) days to re-file a legal memorandum as to this remaining issue, with all appropriate documentation attached, if they so choose. The plaintiff shall have ten (10) days to respond to this additional filing. If the defendants file an additional legal memorandum or documentation, upon expiration of the plaintiff's response time, this matter shall be referred back to the Magistrate Judge for issuance of a Report and Recommendation on this issue.

Upon issuance of a new report, this Court will reconsider its ruling related to the due process claim.

THEREFORE, IT IS HEREBY ORDERED that the Magistrate Judge's Report is **ACCEPTED**, in part, as outlined above (Doc. # 20); plaintiff's objections are **OVERRULED** (Doc. # 21), to the extent not addressed above; and Defendants' motion for summary judgment (Doc. # 13) is granted in part and denied in part.

IT IS SO ORDERED.

s/ Terry L. Wooten
TERRY L. WOOTEN
UNITED STATES DISTRICT JUDGE

March 28, 2006
Florence, South Carolina